

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF NEW YORK

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BILLY HYDE,

Plaintiff

-against-

SPEEDWAY, LLC.,

Defendant

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**NOTICE OF REMOVAL**

**Civil Action No.:**

3:20-CV-1601 (GTS/ML)

PLEASE TAKE NOTICE, that defendant, Speedway LLC, i/s/h/a Speedway, LLC. (“Speedway”), by and through its attorneys, Sugarman Law Firm, LLP, hereby files this Notice of Removal seeking removal of this action from Supreme Court of the State of New York, County of Broome (Broome County Index No. EFCA2020002059) (“the State Court action”) to the United States District Court, Northern District of New York.

In support of the request for removal, Speedway, by and through its attorneys, respectfully states the following:

1. Pursuant to 28 U.S.C. § 1446(a), attached hereto and made a part hereof as **Exhibit A** is an Index of all process, pleadings, and orders served in the State Court action. The documents listed in chronological order within the Index are also annexed individually and are as follows:

- Summons and Complaint, e-filed on October 9, 2020 (copies of which are attached as **Exhibit B**);
- Answer, e-filed on November 2, 2020 (a copy of which is attached as **Exhibit C**);
- Request for Supplemental Demand for Relief, served on November 2, 2020 (a copy of which is attached as **Exhibit D**);
- Plaintiff’s Response to Supplemental Demand for Relief, dated December 10, 2020, received on December 11, 2020 (a copy of which is attached as **Exhibit E**).

2. Upon information and belief, the foregoing constitutes all process, pleadings, and orders allegedly served upon the parties in this action. In addition to that, the following limited discovery has taken place: Speedway’s Demand for Verified Bill of Particulars, Combined Discovery Demands, and

Notice of Examination Before Trial were served on November 2, 2020; plaintiff's Verified Bill of Particulars, dated December 10, 2020, and Plaintiff's Response to Combined Discovery Demands, dated December 10, 2020, were received on December 11, 2020; and Plaintiff's Demand for Discovery and Inspection, dated December 10, 2020, was received on December 11, 2020.

3. The State Court action was commenced in the Supreme Court of the State of New York, Broome County, on October 9, 2020 by the filing of a Summons & Complaint. *See* Exhibit B. The State Court action is a civil action wherein plaintiff alleges that he stepped out of his vehicle in the parking lot at the Speedway Convenience Store, located at 503 E. Main St., Endicott, New York, and his right foot went into a pothole and he was injured. *See* Exhibit B.

4. Pursuant to New York Civil Practice Law and Rules § 3017(c), the monetary amount to which plaintiff deems himself entitled was not included in the Summons & Complaint. *See* Exhibit B.

5. On November 2, 2020, Speedway, by and through its attorneys, served upon plaintiff's counsel a Request for Supplemental Demand for Relief. *See* Exhibit D.

6. On December 10, 2020, plaintiff's counsel responded to Speedway's Request for Supplemental Demand for Relief with Plaintiff's Response to Supplemental Demand for Relief, advising that plaintiff deems himself entitled to \$1,000,000 for pain and suffering. *See* Exhibit E.

7. This is an action of a civil nature in which the District Courts of the United States have been given original jurisdiction in that there exists diversity of citizenship between plaintiff and Speedway and the amount in controversy exceeds the sum of \$75,000.00 exclusive of interest and costs. Accordingly, there exists jurisdiction in the District Court of the United States pursuant to 28 U.S.C. § 1332.

8. According to the Complaint, plaintiff is an individual residing in Endicott, New York, which is in the County of Broome. *See* Exhibit B.

9. Speedway is an active Limited Liability Company organized and existing under the laws of the State of Delaware and its principal place of business is in the State of Ohio. Speedway has as its

sole member MPC Investments LLC, a Limited Liability Company organized and existing under the laws of the State of Delaware with its principal place of business in the State of Ohio. MPC Investments LLC has as its sole member Marathon Petroleum Corporation, a publicly traded entity organized and existing under the laws of the State of Delaware with its principal place of business in the State of Ohio.

10. Under the provisions of 28 U.S.C. § 1441, the right exists to remove the civil action from the Supreme Court of the State of New York, County of Broome to the United States District Court for the Northern District of New York, which embraces the place where it is pending.

11. The civil action involves a controversy between citizens of different States. Upon information and belief, plaintiff is, and was at the commencement of the State Court action, a resident of the State of New York. Thus, he has New York citizenship for diversity jurisdiction purposes. Speedway and its sole member, MPC Investments LLC, are Limited Liability Companies organized and existing under the laws of the State of Delaware with a principal place of business in the State of Ohio. Further, MPC Investments LLC's sole member, Marathon Petroleum Corporation, is a publicly traded entity organized and existing under the laws of the State of Delaware with a principal place of business in the State of Ohio. The citizenship of a limited liability company is determined by the citizenship of its members. *See, e.g., Carden v. Arkoma Assocs.*, 494 U.S. 185, 110 S. Ct. 1015 (1990). Therefore, Speedway's citizenship for purposes of diversity jurisdiction is Delaware and/or Ohio.

12. Upon information and belief, the amount in controversy exceeds \$75,000.00. Plaintiff's Complaint does not contain a monetary demand. *See* Exhibit B. However, it does state that plaintiff "has been damaged in an amount that exceeds the jurisdictional limits of all lower courts[.]" *See* Exhibit B. Further, Plaintiff's Response to Supplemental Demand for Relief, served on December 10, 2020, states that plaintiff demands \$1,000,000 for pain and suffering. *See* Exhibit E. If the allegations contained in the Complaint are ultimately proven, all of which are expressly denied, then a verdict in this matter could exceed \$75,000.00. Therefore, the District Court has jurisdiction over this civil action.

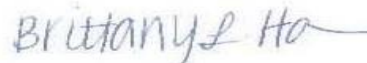
13. In accordance with the requirements set forth in 28 U.S.C. § 1446, this Notice of Removal is being filed within thirty (30) days of receipt by Speedway of a copy of an amended pleading, motion, order or other paper from which it may first be ascertained that the case is one which is or has become removable, *i.e.*, Plaintiff's Response to Supplemental Demand for Relief, served on December 10, 2020, which stated for the first time that plaintiff deems himself entitled to \$1,000,000, satisfying the requirements for diversity jurisdiction. *See* 28 U.S.C. § 1446(b)(3); 28 U.S.C. § 1332; Exhibits B & E.

14. By reason of all of the foregoing, Speedway desires and is entitled to have the civil action removed from the Supreme Court of the State of New York, County of Broome to the United States District Court for the Northern District of New York, which encompasses the venue where the State Court action is pending.

15. A copy of this Notice of Removal is being served upon plaintiff and filed with the Broome County Clerk, as required by 28 U.S.C. § 1446(d), and proof of said filing will be transmitted to this Court once effectuated.

WHEREFORE, Speedway respectfully requests that the civil action pending against it in the Supreme Court of the State of New York, County of Broome be removed and proceed in this Court as an action properly removed to it, along with such other, further and different relief as is just and proper.

Dated: December 22, 2020



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